☐ County Court ☒ District Court Boulder County, State of Colorado 1777 Sixth Street, Boulder, CO 80302	DATE FILED: July 26, 2024 4:23 PM
PEOPLE OF THE STATE OF COLORADO v. **AHMAD AL ALIWI ALISSA** AKA: Defendant	▲ **COURT USE ONLY** ▲
Kenneth E. Kupfner, First Assistant District Attorney Michael T. Dougherty, District Attorney Boulder County Justice Center 1777 Sixth Street Boulder, CO 80302 Phone Number: (303) 441-3700 FAX Number: (303) 441-4703 Attorney Reg. 29924	Case No. D0072021CR000497 Div: 13 Ctrm: G
PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS STATEMENTS-KING SOOPERS (D-058)	

The People, through District Attorney MICHAEL T. DOUGHERTY, respectfully submit the following response to the Defendant's Motion to Suppress Statements-King Soopers (D-058).

STATEMENT OF MATERIAL FACTS

On the afternoon of March 22, 2021, Defendant drove approximately fifteen miles from his home to the King Soopers in Boulder, Colorado.

After arriving at the King Soopers, Defendant shot and killed ten people, including a Boulder police officer, and endangered many other individuals in the store.

After Defendant fired at responding law enforcement officers, he was shot in the leg.

Defendant undressed, dropped his weapon, and began to comply with officers' commands to walk backwards toward them. He was immediately placed in handcuffs and detained. While Defendant was following police commands, an officer can be heard reassuring Defendant that "it's going to be okay."

While Defendant is being handcuffed, Commander Bonafede from Boulder County Sheriff's Office starts questioning him. Commander Bonafede asks multiple questions of Defendant, including:

[1] "Where's your clothes at, man?"
[2] "Why did you take them [your clothes] off?"
[3] "Where's the gun at?"

[4] “Did you shoot people?”
[5] “Are you our shooter?”

Defendant responds to some of Commander Bonafede’s questions including gesturing to where his clothes were and saying, “it’s over there” in reference to the location of the gun. Defendant does not provide an audible response to the questions “did you shoot people” or “are you our shooter.”

Defendant is then handed off to Officer Frederking and Sgt. Drelles. Sgt. Drelles continues to ask Defendant questions related to the ongoing public safety emergency. During this interaction, Defendant is not consistently answering the questions posed to him, and the officers ask some questions more than once. However, in substance, their questions are:

[1] “Is anybody else in there with you?”
[2] “Where’s your mom…is she local?”
[3] “Are you here by yourself?”
[4] “You need to tell me man, is anyone else in there that is going to get hurt?”
[5] “What did you bring with you?”
[6] “Is there anybody else inside that’s going to shoot at us?”

Defendant states that he came alone and that he did not think there was anyone else in the store that would get hurt. During this interaction, however, Defendant also makes the following statements:

[1] “I want to go home, just let me go home.”
[2] “I want to talk to my mom, just let me call my mom.”
[3] “I don’t have to answer any questions, let me call my mom”

Sgt. Drelles tells Defendant on three occasions that they will let him call his mom. In the first instance he says, “I will let you call your mom if you answer my questions.” After Defendant states he does not have to answer questions, Sgt. Drelles responds, “I don’t want anybody else to get killed. I’m not letting you call your mom until you answer my questions. Is there anybody else inside that is going to shoot at us?” Defendant responds, “I don’t believe so, but can I talk to my mom? Just let me talk to my mom.” Sgt. Drelles then says, “yes, we’ll let you call your mom.”

Defendant is then placed in the back of an ambulance. Officers Frederking and Johnson ride with him to the hospital.

Less than five minutes elapsed from the time Sergeant Bonafede took Defendant into custody until the time he was taken to the ambulance.

LEGAL AUTHORITY

Merely because police detain and question an individual does not mean that triggers the requirement for warnings pursuant to *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, (1966). Miranda protections apply only if a defendant is in custody and subject to interrogation. As a

general rule, "interrogation" means "actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response." *People v. Chipman*, 370 P.3d 330, 338 (Colo. Ct. App. 2015) (quoting *People v. Cisneros*, 356 P.3d 877 (Colo. Ct. App. 2014)).

Even where those factors are met, courts have long recognized a public safety exception to the Miranda requirements, which does not require a Miranda warning when, under the totality of the circumstances, the officer's questioning relates to an objectively reasonable need to protect the public or police from immediate danger. *Perez v. People*, 479 P.3d 430, 435 (Colo. 2021).

In so ruling, the United States Supreme Court has held:

> We conclude that the need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination. We decline to place officers... in the untenable position of having to consider, often in a matter of seconds, whether it best serves society for them to ask the necessary questions without the Miranda warnings and render whatever probative evidence they uncover inadmissible, or for them to give the warnings in order to preserve the admissibility of evidence they might uncover but possibly damage or destroy their ability to obtain that evidence and neutralize the volatile situation confronting them.

New York v. Quarles, 467 U.S. 649, 657-658 (1984).

Additionally, the Supreme Court maintains a belief that "police officers can and will distinguish almost instinctively between questions necessary to secure their own safety or the safety of the public and questions designed solely to elicit testimonial evidence from a suspect." *Id.* at 658-659. Where a defendant is questioned about issues of public safety prior to being read the Miranda warning and is then given the warning prior to questioning unrelated to public safety, this demonstrates a clear example of officers properly using their questioning discretion. *See id.*

The public safety exception clearly applies to cases involving firearms. *See generally id.*; *see also Perez*, 479 P.3d at 434. Where a defendant is found with shotgun shells on his person, police questioning about where the gun was prior to being read his Miranda rights falls under the public safety exception. *See Perez*, 479 P.3d at 433. Where a defendant is seen to have an empty holster, questioning related to the location of the gun clearly falls under the public safety exception. *See Quarles*, 467 U.S. at 658. Where a defendant is armed, questions about other potentially armed defendants will fall under the public safety exception. *See People v. Wakefield*, 428 P.3d 639, 651 (Colo. App. 2018). Questions meant to determine whether there could be other armed suspects or injured victims in the vicinity also fall within the public safety exception. *Id.* Where a defendant is questioned about issues of public safety prior to being read the Miranda warning and is then read Miranda warning prior to questioning unrelated to public safety is a clear example of officers properly using their questioning discretion. *See Quarles* 467 U.S. at 658-659.

Turning to the issue of voluntariness, "[w]hen a defendant challenges the voluntariness of a statement, the prosecution must establish by a preponderance of the evidence that the defendant made the statement voluntarily." *People v. Valdez*, 969 P.2d 208, 210 (Colo. 1998). A court "must conclude that, absent deliberately coercive or improper tactics in obtaining the initial statement, the mere fact that a suspect has made an unwarned admission does not warrant a presumption of compulsion." *People v. Wickham*, 53 P.3d 691, 694 (Colo. App. 2001). "Critical to any finding of involuntariness is the existence of coercive governmental conduct, either physical or mental, that plays a significant role in inducing a confession or inculpatory statement." *Valdez*. at 211 (citing *Colorado v. Connelly*, 479 U.S. 157, 167 (1986)).

The Court is to consider the totality of the circumstances surrounding a defendant's statements when determining voluntariness. *Valdez*, 969 P.2d at 211 (citing *People v. Trujillo*, 938 P.2d 117, 126 (Colo. 1997)). The factors to be considered by the Court when evaluating the voluntariness of a statement include:

> [1] Whether the defendant was in custody or was free to leave and was aware of his situation;
> [2] Whether the Miranda warnings were given prior to any interrogation and whether the defendant understood and waived his Miranda rights;
> [3] Whether the challenged statement was made during the course of an interrogation or instead was volunteered;
> [4] Whether any overt or implied threat or promise was directed to the defendant;
> [5] The method and style employed by the interrogator in questioning the defendant and the length and place of the interrogation; and
> [6] The defendant's mental and physical condition immediately prior to and during the interrogation. . . .

Id.

To find a defendant's statement involuntary, "[a] necessary prerequisite . . . is a finding that the police conduct in question was coercive." *Id*. at 212. (citing *Connelly*, 479 U.S. at 167). If coercive conduct is found, the Court must continue its analysis and conclude that the conduct played a significant role in inducing a defendant's statements. *Id*. Finally, the Court then must find that the defendant's will was overborne by improper state conduct. *Id*.

In *People v. Clayton*, 207 P.3d 831, 836 (Colo. 2009), the Colorado Supreme Court addressed a situation where officers declined a suspect's request to call his mother prior to waiving his Miranda rights. In that case, the Court found that a suspect does not have a constitutional right to call family members and denying such a request does not weigh against voluntariness. *Id.*

I. Defendant's Statements Fall Within the Public Safety Exception to *Miranda*

The People do not contest that Defendant was in custody during questioning. The People fundamentally disagree, however, that the statements must be suppressed. Defendant's motion does not address the public safety exception to the *Miranda* requirement, which clearly fits this case.

There is no more pressing a public safety emergency than the one that confronted Commander Bonafede, Sgt. Drelles and Officer Frederking on March 22, 2021. The initial questioning by Commander Bonafede was focused on identifying if Defendant was the shooter, as well as where the firearm was located. *See* Def.'s Mot. to Sup. at 6. This initial questioning was substantially similar to the questioning in *Perez* as it was primarily concerned with identifying if this potentially armed individual was an ongoing threat, or if there were additional threats as the firearm was still inside the building. Additionally, the questioning by Sgt. Drelles mirrors the questioning in *Wakefield*. The clear concern in the questioning, and in *Wakefield*, is if other threats existed and whether more people were hurt.

In this case, officers responded to a shooting in a public place where ten people had been killed and many others endangered including responding officers that were fired upon when attempting to enter the store. Additionally, reports aired to responding officers included the possibility of multiple shooters. There was a clear need to ensure public safety, render aid, and determine whether there was an ongoing threat or if other harm was imminent.

The officers' questions were reasonably prompted by a concern for public safety and the need for such answers substantially outweigh Defendant's privilege against self-incrimination.

II. Defendant's Statements Were Voluntary

In this case, the factors laid out in *Valdez* clearly support that Defendant was not coerced into speaking with officers at King Soopers. Additionally, Defendant makes no argument that police conduct "played a significant role in inducing Defendant's statements" nor does Defendant demonstrate that his "will was overborne by improper state conduct." *Valdez*, 969 P.2d at 211.

Defendant's motion only addressed one prong of *Valdez*: whether the police conduct was coercive. Applying the above listed factors, and assessing the totality of the circumstances, it is clear that:

> [1] Defendant was in custody;
> [2] Defendant had not received nor was he entitled to a Miranda warning, as discussed above, but he made clear that he knew he was under no obligation to talk to the police;
> [3] Defendant's statements did follow questioning by police but those statements only occasionally answered the questions;
> [4] Defendant was told that he could not talk to his mother until after he answered questions, however, there is no reasonable expectation that while being arrested for mass murder a Defendant should be able to place a phone call;
> [5] The method of questioning was mostly conversational, occurred in a public place while walking, and in each instance lasted at most thirty seconds; further, near the beginning of their interaction police reassured Defendant that everything was going to be okay;
> [6] Defendant displayed a calm demeanor throughout the interactions in question, stated he knew his right to remain silent, and then volunteered answers to some questions.

Further, when compared to *Valdez*, this case cannot be viewed as coercive as *Valdez* was determined not to be. In *Valdez*, the trial court found:

> [1] [An officer] was shown to have been angry and confrontational with [the defendant];
> [2] [An officer] argued with and condemned [the defendant];
> [3] [The defendant] was confused when talking with [an officer] because of the type of interrogation;
> [4] [The defendant] was hungry and tired at the time of the interrogation; and
> [5] [The defendant's] request for rest was denied.

969 P.2d at 211-212. Despite these findings above, the court in *Valdez* held that no coercion occurred. None of the aggravating factors in *Valdez* are seen here.

Additionally, Defendant did not have a constitutional right to contact his mother, and the officers' refusal to let him do so did not render his statements involuntary. *Clayton*, 207 P.3d at 836.

Turning to the second and third prongs of the voluntariness inquiry, issues Defendant did not address, Defendant's will was not clearly overborne. The entire interaction with Defendant at King Soopers was very brief, and he was not borne down by repeated questioning or a prolonged interview.

Additionally, Defendant answered some of Commander Bonafede's questions, related to the location of the gun and his clothing, but did not respond to questions about whether he was the shooter. Defendant never changed his answers during questioning by Commander Bonafede. Further, during questioning by Sgt. Drelles, Defendant was consistent in asking to speak with his mother. Defendant being told he could call her later did not substantially affect his willingness to provide answers or cause him to provide different information to the officers.

The People will tender to the Court a CD with the body worn camera video of Commander Bonefede, Sgt. Drelles and Officer Frederking marked as People's Exhibit 1.

WHEREFORE, Defendant's Motion to Suppress Statements should be denied.

Respectfully submitted,

MICHAEL T. DOUGHERTY
District Attorney

By: /s/ Kenneth E. Kupfner
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION was served on via

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